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**2003**

**LEGAL GUIDE TO DOOR-TO-DOOR CRIMINALS**

**Door-to-Door Sales Contracts**

**Transient Sellers**

**How Police and District Attorneys Can Protect Citizens  
From Crimes Committed by Door-to-Door Sellers**

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## **INTRODUCTION**

As you know, door-to-door home repair fraud is rampant in the State of Maine. This Legal Guide describes the three Maine door-to-door **criminal** laws that currently exist to protect Maine homeowners. These three laws are:

1. **The Consumer Solicitation Sales Act** (32 M.R.S.A. §§4661-4670), which requires that a door-to-door seller of home repair services must use a specific written contract and wait three (3) days before even **beginning** the job. This is important because if you find them working within three (3) days of the solicitation then you have “caught” them in the act of violating this law. Violation is a Class E crime. If the violation is intentional, it is a Class D crime.

2. **The Transient Sales Act** (32 M.R.S.A. §§14701-14716), which requires transient sellers of home repair services to register with the State if they do not have a permanent place of business in Maine (which is defined as either a 12-month lease or ownership of the business building). You should ask the address of their Maine “permanent place of business”. If they do not have one, demand to see proof of their State registration as a Transient Seller. Failure to be registered can be a Class E crime. If intentional, a violation is a Class D crime. (Call Licensing Division at the Maine Department of Professional and Financial Regulation (624-8603) to confirm that the seller is registered.)

3. Most recently, we have enacted the **Door-to-Door Seller of Home Repair Services Act** (32 M.R.S.A. §§14501-14512). This new law builds on the two laws above and requires any **door-to-door seller of home repair services** to be registered with the State and to carry a State issued registration card if he is soliciting in a municipality in which he does not have a permanent place of business (a 12-month lease or ownership). As you can imagine, this law is relative easy to enforce. If you find a driveway paver who is going door-to-door ask them: (a) do you have a permanent place of business in this municipality; (b) if not, show me your State registration card. Violation is a Class E crime. If the violation is intentional, it is a Class D crime. (Call Licensing Division at the Maine Department of Professional and Financial Regulation (624-8603) to confirm that the seller is registered.)

The following chapters discuss these bills in much greater detail. Because these three criminal laws are often not available in police departments, we have included, in Appendix A, copies of the statutes themselves. But the above summarizes the most important points of these laws. The typical door-to-door seller of home repair services (which includes not just driveway paving but tree-trimming, chimney repairs, etc.) could violate all three of these laws in the course of their standard business operation.

I am also attaching in Appendix B a hypothetical fact pattern and four draft District Court criminal complaints based on that fact pattern.

We are attempting to maintain in this office a file listing reports of the many different door-to-door sellers operating in the State. If you have any questions concerning a particular door-to-door seller, please do not hesitate to contact me or Gladys Guban at 626-8800. We will tell you what we know about that particular seller.

Thank you.

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## **DOOR-TO-DOOR SALES CONTRACTS**

### **The Consumer Solicitation Sales Act (Cash Sales)** **32 M.R.S.A. §§4661-4670 (Criminal Violation) (See Appendix A, p. A-1 to A-4)**

#### **1. INTRODUCTION: THE THREE-DAY WAITING PERIOD**

The purpose of the three-day waiting period required by the Consumer Solicitation Sales Act (cash or check sales) is to provide consumers with a chance to reconsider decisions to buy certain goods or services that may have been sold "door-to-door" under high-pressure conditions. Like the Transient Sales Act (see pages 5 to 8), these laws have particular application to driveway pavers. Violations are Class D crimes.

Basically, the Consumer Solicitation Sales Act (cash or check sales) require sellers to use written contracts that inform consumers of their three-day right to void the contract. Further, any permanent addition to a house (e.g., driveway paving, a rebuilt chimney, new siding) cannot even be started by the door-to-door seller until the three-day cooling-off period has elapsed, and the contract must specifically tell this to the homeowner.

#### **2. WHAT SALES ARE COVERED**

A sale is a CONSUMER SOLICITATION SALE if:

- A. the sale<sup>1</sup> involves "merchandise" -- objects, wares, goods, commodities, intangibles or services;
- B. the goods or services cost more than \$25;
- C. the sale occurs anywhere other than at the seller's place of business; and
- D. the initial contact was made by the seller, in person or by phone, not the consumer (32 M.R.S.A. §4662, Appendix A, p. A-2).

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<sup>1</sup>/"Sale" includes any sales, transfer, exchange or barter, offer for sale or attempt to sell any merchandise for cash or credit.

### 3. **WHAT ARE DOOR-TO-DOOR SELLERS REQUIRED TO DO**

If the sale is a "consumer solicitation sale", the seller must:

- A. Provide a written contract with:
  - (1) The seller's name and address,
  - (2) the date,
  - (3) the terms of the sale or offer,
  - (4) the consumer's three-day right to cancel,
  - (5) the signatures of seller and consumer,
  - (6) if the contract involves a permanent addition to the consumer's home (e.g., a driveway paving job or rebuilt chimney), a statement that the work cannot even be started until the consumer's right to cancel has expired;
- B. provide the consumer with a completed copy of the contract signed by both parties:
- C. if home repair or improvement-type work is being provided, wait the required three business days before commencing work;
- D. if the consumer exercises his right to cancel, the seller must:
  - (1) if a permanent addition to the home is involved (e.g., driveway paving) not start work and return any money. If the work has already begun the homeowner can sue civilly for any damages to his home.
  - (2) pick up any goods from the consumer within 20 days of cancellation (or else the consumer is free to keep them), and
  - (3) return the consumer's money within 15 days of cancellation.

### 4. **CONSUMER RIGHTS AND OBLIGATIONS**

A. The consumer may cancel the agreement by midnight of the third business day (only Sundays and legal holidays are not business days) following the day on which the sale is made. All that is required is placing the written notice of cancellation in the mail before the three days. It is best (but not necessary) to send the notice by registered mail. The consumer should keep a copy.

B. The consumer must void the sale IN WRITING. No special words are needed. Anything that in effect says, "I don't want it; give me my money back" is enough.

C. Once the consumer has canceled, he or she must hold any goods for twenty (20) days for the seller to come and get them. THE CONSUMER DOES NOT HAVE TO TAKE THEM ANYWHERE OR MAIL THEM. If the seller does not come and get the goods within twenty (20) days, the CONSUMER MAY TREAT THEM AS A GIFT and is still entitled to his or her money back.

D. If the seller started or completed a permanent addition to the home (such as driveway paving) before the three-day right to cancel expired, the consumer may still cancel and is under no obligation to pay for the work already done.

## **5. CRIMINAL VIOLATION BY DOOR-TO-DOOR SELLERS**

A. A seller's violation of the Consumer Solicitation Sales Act is a Class E crime (32 M.R.S.A. §4667, Appendix A, p. A-4). If the State pleads and proves that the violation was intentional, then the seller has committed a Class D crime. Violations are also civil violations of the Unfair Trade Practices Act.

B. Solicitations made at the home of a purchaser and which constitute a consumer credit transaction are exempt from this law (32 M.R.S.A. §4668), and should be enforced under the equivalent provisions found at 9 M.R.S.A. §§3-501-3-507 (criminal penalty, fine of up to \$2,500 or up to six months in jail or both). This credit law will rarely come into play with driveway pavers as their sales are almost always cash sales.

C. Only the owner or co-owner of the door-to-door business can commit the crime, not simply a member of the crew.

## **6. WHAT LAW ENFORCEMENT OFFICIALS CAN DO**

If you encounter a door-to-door seller in your community, do the following:

A. Find out who is the owner (owners) of the business and who are the employees (get everyone's name, address and birthday and all vehicle identifications).<sup>2</sup>

B. Find out what he is selling and the location at which the sale is made; remember the seller must initiate the sales discussion or it probably does not meet the definition of a door-to-door solicitation (32 M.R.S.A. §4662).

C. Find out if a written contract is being used.

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<sup>2/</sup> It is sometimes difficult to tell who is the "owner" of a door-to-door driveway paving crew. Interview the members of the crew as to whose business it is.

D. Determine if the contract conforms with the law. We never have found a door-to-door driveway paver that has in its written contract the required statement that work cannot begin until the three-day cancellation period has elapsed.

E. If there is no contract or if it does not conform with the law (e.g., both parties have not signed; the seller's name and address are not present; the three-day waiting period is not properly described, etc.), the seller can be charged with a Class D crime.

F. If the seller is putting in a permanent addition to the household (e.g., a new driveway-paving job) and he did not wait three days, then he can be charged. Thus, no warrant is needed if you find him working on the driveway before the three-day waiting period has finished running.

H. Any complaints of this nature should also be reported to the Attorney General's Office at 626-8800 for our records.

Make sure we receive the seller's name and address and identification of employees and vehicles. Also, any photos of the pavers would be very helpful, as they sometimes "exchange" names.

## **SELLERS WITHOUT A PERMANENT PLACE OF BUSINESS**

### **The Transient Sales Act**

**32 M.R.S.A. §§14701-14716 (Class D Crime) (See Appendix A, p. A-5 to A-12)**

#### **1. INTRODUCTION**

The Transient Sales Act has particular application to those sellers who travel into and throughout the State selling services and goods such as driveway paving jobs or magazine subscriptions, and who then seem to "disappear" by the time problems develop.

Transient sellers, by statutory definition, have no permanent place of business in the State. They are difficult to locate when complaints against them are received. The Maine Class D criminal law is designed to protect consumers against financial loss in dealing with such sellers. The law requires that transient sellers be registered by the State Department of Professional and Financial Regulation and post a substantial bond or cash, and carry with them at all times a State identification card.

#### **2. WHO IS A TRANSIENT SELLER**

A transient seller is a person (including a corporation) who:

A. owns or is a partner in a business which sells<sup>3</sup> any objects, wares, goods, promises, commodities, intangibles, services or other things of value (EXCLUDING food and enrollment at vocational and technical schools located outside of Maine and that are registered with the Department of Educational and Cultural Services);

B. sells face-to-face or by telephone;

C. sells to consumers and businesses (except those businesses which will, in turn, resell the product); and

D. does not have a permanent place of business in Maine: a building which is either owned or rented with at least a 12-month written lease.

#### **3. WHO IS NOT A TRANSIENT SELLER**

A person is NOT a Transient Seller if:

A. he or she sells the above-mentioned items at public fairs, expositions or bazaars;

B. he or she is a member of a public service organization selling on its behalf;

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<sup>3</sup>/"Selling" includes any sale, transfer, exchange or barter, offer to sell, promise to sell, attempt to sell or advertisement to sell for cash or credit.

- C. he or she sells exclusively by mail contact; or
- D. he or she is only an employee of a transient seller.

#### **4. WHAT ARE TRANSIENT SELLERS REQUIRED TO DO**

A. Transient sellers must REGISTER with the State Department of Professional and Financial Regulation in Augusta and obtain a registration. A substantial bond or cash must be posted before a registration is granted (32 M.R.S.A. §14708, Appendix A, p. A-8).

B. Transient sellers and their employees must carry at all times when engaging in sales a Transient Sellers registration and must present the registration for inspection upon request of any person (32 M.R.S.A. §14703 (2)). Failure to do so is a civil violation that can result in a fine of up to \$200. Violators can be issued a civil penalty summons.

C. Every time a Transient Seller makes a sale, he must provide the customer with a written receipt which discloses his State registration number and discloses his name and permanent place of business (32 M.R.S.A. §14704 (2)).

D. Any advertisement placed by a Transient Seller must disclose the Transient Seller's registration number in the following way:

State Department of Professional and Financial Regulation  
Transient Seller's Registration Number: (fill in number)

The advertisement shall also disclose the Transient Seller's permanent business address (32 M.R.S.A. §14704 (1)).

E. Transient Sellers must comply with any relevant municipal ordinances as well as the State law.

#### **5. CRIMINAL VIOLATIONS BY TRANSIENT SELLERS**

A. Transient Sellers who sell without a registration issued pursuant to this statute have committed a Class E crime. If the State pleads and proves that the violation was intentional, then the seller has committed a Class D crime with a maximum penalty of one year in jail and a \$1000 fine (32 M.R.S.A. §14713 Appendix A, p. A-11).

B. In addition, any violation of the Transient Sales Act violates the Unfair Trade Practices Act, administered by the Attorney General. The Unfair Trade Practices Act is enforced through civil remedies.

## 6. **WHAT LAW ENFORCEMENT OFFICIALS CAN DO**

If you encounter a person selling merchandise in your town and you suspect he might be a Transient Seller, do the following:

- A. find out what he is selling;
- B. find out who he is selling to;
- C. find out who he works for or is he self-employed; obtain company name, addresses and the personal background of the seller;
- D. find out if the business has a permanent place of business in Maine (he must own it or have a 12-month written lease; the seller's home can qualify as a place of business);
- E. if the company (or if he is self-employed, if he himself) has no permanent place of business in Maine, find out if he is licensed with the Department of Professional and Financial Regulation. Call the Licensing and Enforcement Division at 624-8603 and ask if either the company or the seller or both are licensed as a Transient Seller;
- F. find out if he is properly disclosing in his written receipt or contract his State identification number and permanent place of business;
- G. find out if his advertisements properly disclose his State identification number and his permanent place of business;
- H. if the company is licensed (or if a self-employed seller is licensed) and not violating any local ordinance or the Consumer Solicitation Sales Act (see previous pages 1-4), the salesperson may continue to sell;
- I. if the company is not licensed by the State, the company has committed a Class D crime and a summons can be issued;
- J. if the company is unlicensed or if the salesman does not have his registration then the owner or the seller or both can be arrested with a warrant or summonsed and charged with a Class D crime (32 M.R.S.A. §4688). (Remember: you cannot arrest if the crime is not committed in your presence, but you can issue a summons or obtain a warrant);
- K. if you charge or warn a salesperson, please call the Public Protection Division of the Attorney General's Office (626-8800) or the Attorney General's Investigative Division at (626-8520) so that there is a record of the seller's name and address.

## **DOOR-TO-DOOR TRANSIENT SELLERS OF HOME REPAIR CONTRACTS**

### **The Door-To-Door Home Repair Transient Sellers Act (32 M.R.S.A. §§14501-14512 (See Appendix A, p. A-14 to A-18))**

#### **1. INTRODUCTION: PAVERS MUST BE REGISTERED WITH THE STATE**

In 1993 the Legislature passed a new law that complements both the Consumer Solicitation Sales Act and the Transient Sellers Act. It requires any seller of home repair services (which includes a long listing of almost every home repair activity ever imagined, see Appendix A, p. A-17, 32 M.R.S.A. §14501 (6)) to be registered with the State if the seller is going door-to-door in a municipality in which he does not have a permanent place of business. Said sellers must not only have a State registration number, but must use a specific contract that meets the requirements of the law. In order to find out if a paver is registered, call:

**Department of Professional & Financial Regulations  
Division of Licensing & Enforcement, Transient Sales  
35 State House Station, Augusta, Maine 04333-0035  
Telephone: 207-624-8603**

#### **2. WHAT SALES ARE COVERED**

A sale comes under the Door-To-Door Home Repair Transient Sellers Act if:

- A. The sale involves any home repair service (see statute for the definition).
- B. The sale occurs anywhere other than at the seller's place of business in a municipality in which the seller does not have a permanent place of business;
- C. The initial contact was accomplished by means of a personal visit to the consumer, other than at the seller's place of business, without the consumer soliciting the initial contact (Appendix A, p. A-17, 32 M.R.S.A. §14501 (3)).

#### **3. WHAT ARE TRANSIENT DOOR-TO-DOOR SELLERS OF HOME REPAIR SERVICES REQUIRED TO DO**

If the sale is a door-to-door transient seller of home repair services sale, then the seller must:

A. Provide a written contract that meets the written contract standards for:

- (1) Consumer Solicitation Sales Act (the three day right to revoke); see pages 1-4 and Appendix A, pages A-1 - A-4;
- (2) Transient Seller Act ( but not if the seller has a permanent place of business somewhere in Maine); see pages 5-8 and Appendix A, pages A-5 - A-12;
- (3) If the contract is for more than \$1,400, The Home Construction Contracts Act (which requires specific contract provisions such as an express warranty for any home repair costing more than \$1,400).

B. Provide the consumer with a completed copy of the contract (signed by both parties); a copy of a model contract that meets the above requirements (and which assumes the home repair costs more than \$1,400 so that the Home Construction Contract Act applies) is included in Appendix A, pages A-18 to A-20

C. Wait the required three business days before commencing work;

D. If the consumer exercises his right to cancel, the seller must return the consumer's money within 15 days of cancellation.

#### **4. CONSUMER RIGHTS AND OBLIGATIONS**

The consumer rights and obligations are the same as set forth in the Consumer Solicitation Sales Act above (see pages 1-4 and Appendix A, pages A-1 - A-4).

#### **5. CRIMINAL VIOLATION BY TRANSIENT DOOR-TO-DOOR HOME REPAIR SELLERS**

A. A seller's violation of the door-to-door home repair transient sellers act is a Class E crime (32 M.R.S.A. §14512, Appendix A, p. A-17). If the State pleads and proves the violation was intentional, then the seller has committed a Class D crime. Violations are also civil violations of the Unfair Trade Practices Act.

B. It should be fairly easily to establish whether the seller has violated the statute. If the seller is going door-to-door and does not have a permanent place of business in the municipality in which he is soliciting. Then the seller must be registered with the State. Call the State Licensing Division at 624-8603 and ask if the door-to-door seller is registered under the Door-To-Door Home Repair Transient Sellers Act. If not; and you can prove that he was going door-to-door and he initiated contact with the consumer, then you have a solid Class D criminal violation.

C. Even if he is registered with the state (to date only a few driveway pavers have deemed it necessary to register) then he still must be using the written contract required by this

law and must be filling in his registration number on the contract, which meets the requirements of this law. See Appendix A, pages A-18 - A-20 for a copy of a model contract which meets the requirements of this law when the repair costs more than \$1,400. Please call us directly if you wish to discuss a particular paver and your experiences.

## **6. WHAT LAW ENFORCEMENT OFFICIALS CAN DO**

If you encounter a transient door-to-door seller of home repair services in the act of working in your community, do the following:

A. Find out who is the owner (owners) of the business and who are the employees (get everyone's name, address, and birth date and all vehicle identifications).

B. Find out what is being sold and where the sale was made; remember, the seller must initiate the sales discussion or it probably does not meet the definition of a door-to-door solicitation (32 M.R.S.A. §4662).

C. Find out if the owner has a permanent place of business in the State (owns the business location or has a 12-month lease) (32 M.R.S.A. §14701(5)).

D. If the seller is soliciting in a municipality in which he does not have a permanent place of business, find out if the seller is registered with the State as a door-to-door home repair transient seller (32 M.R.S.A. §14504). To do this, call the State Division of Licensing and Enforcement at 207-624-8603.

E. If you find the seller actually in the act of soliciting or in the act of doing the paving work, and he is in violation of any of our criminal door-to-door sale laws (i.e., is not registered with the State, is not using the required written contract, not waiting the full three days before beginning work, etc.), then no warrant is needed in order to make an arrest.

F. Any complaints of this nature should be reported to the Public Protection Division of the Attorney General's Office at (626-8800) or the Attorney General's Investigative Division at (626-8520) for our records. Make sure you obtain the seller's name and address and identification of employees and vehicles. Also, any photos of the pavers would be very helpful, as they sometimes "exchange" names.

## **APPENDIX A**

### **COPIES OF THE THREE DOOR-TO-DOOR SALE LAWS**

1. Consumer Solicitation Sales Act  
(32 M.S.R.A. §§4661-4670) (pp. A1- A4)
  2. Transient Sales Act  
(32 M.R.S.A. §§14701-14716) (pp. A5- A12)
  3. Door-to-Door Home Repair Transient Sales Act  
(32 M.R.S.A. §§14501-14512) (pp. A13- A17)
- A. Sample of contract that meets the requirements of this law (pp. A18- A20)

## SUBCHAPTER V

### CONSUMER SOLICITATION SALES

#### **32 § 4661. Definitions**

As used in this subchapter, unless the context otherwise indicates, the following words shall have the following meanings. [1977, c. 696, § 250 (new).]

**1. Consumer.** "Consumer" means any person who purchases or contracts for the purchase of merchandise for any purpose, except resale in the ordinary course of trade or business. [1969, c. 395 (new).]

**2. Merchandise.** "Merchandise" includes any objects, wares, goods, commodities, intangibles or services. [1969, c. 395 (new).]

**2-A. Permanent place of business.** "Permanent place of business" means the building or other permanently affixed structure, including a home residence, which is used in whole or in part for the purpose of engaging in sales of consumer merchandise. [1987, c. 202, § 1 (new).]

**3. Person.** "Person" includes any individual, firm, copartnership, association, society, club, corporation, estate, trust and any agent, employee, salesman, partner, officer, director, member, stockholder or trustee thereof. [1969, c. 395 (new).]

**4. Sale.** "Sale" includes any sale, transfer, exchange or barter, offer for sale or attempt to sell any merchandise for cash or on credit. [1969, c. 395 (new).]

Section History:

1969, c. 395 (NEW).

1977, c. 696, § 250 (AMD).

1987, c. 202, § 1 (AMD).

#### **32 § 4662. Contents of contract**

Where merchandise is sold or contracted to be sold, whether under a single contract or under multiple contracts, to a consumer as a result of or in connection with a salesman's direct contact accomplished by means of and including, but not limited to, a personal visit or a telephone call upon the consumer, other than at the seller's place of business, without the consumer soliciting the initial contact, the contract shall be in writing, bear the signature of the seller and the consumer, contain the date of the transaction, the terms of the sale or offer, the name and the mailing address of the seller's permanent place of business, a statement of the consumer's right to avoid as provided in this subchapter and a statement of the limitation contained in section 4664-A. A completely executed copy of the contract or agreement shall be furnished by the seller to the consumer immediately after the consumer signs the agreement or contract. [1987, c. 202, § 2 (amd).]

Section History:

1969, c. 395 (NEW).

1977, c. 331 (RPR).

1981, c. 187, § 3 (AMD).

1987, c. 202, § 2 (AMD).

### **32 § 4662-A. Frozen food contracts (REPEALED)**

Section History:

1991, c. 239, § 2 (NEW).

1991, c. 750, § 3 (RP).

### **32 § 4663. Consumer's right of avoidance**

Where merchandise is sold or contracted to be sold, whether under a single contract or under multiple contracts, to a consumer as a result of or in connection with a salesman's direct contact accomplished by means of and including, but not limited to, a personal visit or a telephone call, upon the consumer other than at the seller's place of business, without the consumer soliciting the initial contact or sale, the consumer may void the contract or sale by giving notice of his intention not to be bound by the contract or sale and returning or making available for return any merchandise delivered pursuant to the terms of this subchapter. [1977, c. 331 (rpr).]

Section History:

1969, c. 395 (NEW).

1977, c. 331 (RPR).

### **32 § 4664. Notice**

The consumer may avoid a contract or sale by giving written notice of avoidance to the seller by ordinary mail, postage prepaid, within 3 full business days following the day on which the contract or sale was made. The notice shall be sufficient if addressed to the seller at the address given on the contract or agreement. Notice of avoidance shall be effective upon deposit in the United States mail. The notice of avoidance given under this section need not take a particular form and is sufficient if it expresses the intention of the consumer not to be bound by the sale. [1969, c. 395 (new).]

In addition to any other right to avoid a contract or sale, the first-time buyer of a home food service plan has the right prior to delivery of the food or nonfood items to avoid the contract or sale until midnight of the 10th day after the date on which the buyer signs a contract subject to this subchapter. If the contract requires the seller to deliver a home food service plan, the seller shall allow the first-time buyer of a home food service plan to avoid the contract or sale subject to this subchapter, without charge, at the time of delivery of the food or nonfood items. [1991, c. 750, §4 (new).]

Section History:

1969, c. 395 (NEW).

1991, c. 750, § 4 (AMD).

### **32 § 4664-A. Time of seller's performance**

If the contract requires the seller to affix merchandise permanently to real estate or its appurtenances, then the seller may not begin performance as long as the consumer has the right to cancel. [1981, c. 187, § 4 (new).]

Section History:

1981, c. 187, § 4 (NEW).

### **32 § 4665. Consumer's obligation**

Within 20 days of notification to the seller of the avoidance of a contract or sale as provided under this subchapter, the consumer upon demand shall tender to the seller any goods delivered to the buyer pursuant to the sale or contract but need not tender at any place other than his residence. If the seller fails to take possession of such goods within 20 days after cancellation, the goods shall become the property of the consumer without obligation to pay for them. [1971, c. 150, § 1 (rpr).]

Section History:

1969, c. 395 (NEW).

1971, c. 150, § 1 (RPR).

### **32 § 4666. Seller's obligation**

If the seller is given written notice of avoidance by the consumer pursuant to this subchapter and any merchandise that has been delivered is returned or made available for return to him, the seller must return to the consumer within 15 days of the effective date of the notice of avoidance, the full amount of any payment or down payment made or consideration given under the contract or sale for the merchandise. [1969, c. 395 (new).]

Section History:

1969, c. 395 (NEW).

### **32 § 4667. Criminal penalties**

A violation of section 4662, section 4664-A or section 4666 is a Class E crime for which the State need not plead or prove a culpable state of mind, except that a violation of section 4662, section 4664-A or section 4666 is a Class D crime if the State pleads and proves that the act or omission was intentional. [1995, c. 681, §2 (rpr).]

Section History:

1969, c. 395 (NEW).

1987, c. 202, § 3 (AMD).

1995, c. 681, § 2 (RPR).

### **32 § 4668. Limitation**

§4668. Limitation

1. Exclusions. This subchapter does not apply to the following:

A. A sale where the gross sales price, including any interest or carrying charges, is less than \$25; [2001, c. 276, §1 (new).]

B. A transaction regulated under << Title>> 9-A, sections 3-501 to 3-507; [2001, c. 276, §1 (new).]

C. A sale by a dealer or agent or salesman of a dealer registered pursuant to chapter 105 of stocks, bonds, debentures or securities representing stocks, bonds or debentures registered pursuant to chapter 105 or expressly exempt from registration pursuant to chapter 105; [2001, c. 276, §1 (new).]

D. A sale of insurance regulated under << Title>> 24-A, sections 2515-A and 2717; or [2001, c. 276, §1 (new).]

E. A sale of credit services by a supervised lender, as defined in << Title>> 9-A, section 1-301, subsection 39, or an agent or affiliate of a supervised lender to the extent the affiliate or agent is selling or offering to sell the credit services of the supervised lender. For purposes of this paragraph, "credit services" includes any extension of credit and any product or service that a supervised lender is authorized by law or regulation to sell in connection with or relating to an extension of credit, such as credit insurance and a debt cancellation policy. For the purposes of this paragraph, "affiliate" has the same meaning as that term is defined in << Title>> 9-B, section 131, subsection 1-A. Transactions covered by this exemption are limited to those that become effective only after the consumer has affirmed the terms and conditions of the agreement by an acceptance initiated by the consumer. [2001, c. 276, §1 (new).] [2001, c. 276, §1 (new).]

The Reviser's Office cannot provide legal advice or interpretation of Maine law to the public. If you need legal advice, please consult a qualified attorney.

Office of the Reviser of Statutes 7 State House Station

State House Room 108

Augusta, Maine 04333-0007

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### **32 § 4669. Referral sales, rebate or discount violations**

No seller, in any sale subject to this subchapter, shall offer to pay a commission or give a rebate or discount to the buyer in consideration of the buyer's giving to the seller the names of prospective purchasers or otherwise aiding the seller in making a sale to another person, if the earning of the commission, rebate or discount is contingent upon an event that is to happen subsequent to the time the buyer agrees to buy. [1971, c. 150, § 2 (new).]

Section History:

1971, c. 150, § 2 (NEW).

### **32 § 4670. Violation as unfair trade practice**

Any violation of this subchapter shall constitute a violation of Title 5, chapter 10, Unfair Trade Practices Act. [1973, c. 249 (new).]

Section History:

1973, c. 249 (NEW).

**32 § 4671. Prohibited practices**

A seller may not: [1991, c. 524, §4 (new).]

**1. Misrepresentations.** Misrepresent any material fact relating to the terms or conditions of sale;

[1991, c. 524, §4 (new).]

**2. False impressions.** Create an impression that is false or the seller does not believe to be true; and

[1991, c. 524, §4 (new).]

**3. False promises.** Promise performance that the seller does not intend to perform or knows will not be performed.

[1991, c. 524, §4 (new).]

Section History:

1991, c. 524, § 4 (NEW).

## TRANSIENT SALES ACT

Chapter 128: REGULATION OF TRANSIENT SALES (HEADING: PL 1993, c. 444, @1 (new); PL 2001, c. 324, @2 (rpr))

Subchapter 2: TRANSIENT SELLERS OF CONSUMER MERCHANDISE (HEADING: PL 2001, c. 324, @12 (new))

### §14701. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [2001, c. 324, §12 (new).]

**1. Consumer.** "Consumer" means any person who purchases or contracts for the purchase of merchandise for any purpose except resale in the ordinary course of trade or business. [2001, c. 324, §12 (new).]

**2. Department.** "Department" means the Department of Professional and Financial Regulation. [2001, c. 324, §12 (new).]

**3. Employee.** "Employee" means any independent contractor, agent or person working for a salary or commission. [2001, c. 324, §12 (new).]

**4. Merchandise.** "Merchandise" includes any objects, wares, goods, promises, commodities, intangibles, services or other things of value but does not include food or technical or vocational schools located outside of the State that are registered pursuant to Title 20-A, section 9501. "Merchandise" does not include securities that are registered or exempt from registration pursuant to chapter 105, the Revised Maine Securities Act and rules adopted pursuant to that Act. [2001, c. 324, §12 (new).]

**5. Permanent place of business.** "Permanent place of business" means any building or other permanently affixed structure, including a home residence, that is owned or held under a 12-month lease or rental agreement at the time business is commenced and is used in whole or in part for the purpose of engaging in sales of consumer merchandise. [2001, c. 324, §12 (new)]

**6. Person.** "Person" includes natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations and any other legal entities. [2001, c. 324, §12 (new).]

**7. Sale.** "Sale" includes any sale, transfer, exchange or barter, offer for sale, promise to sell or attempt to sell, or advertisement for sale, of any merchandise for cash or for credit. [2001, c. 324, §12 (new).]

**8. Transient seller of consumer merchandise or transient seller.** "Transient seller of consumer merchandise" or "transient seller" means any person who engages in the business of selling merchandise to consumers by means of personal contact or telephone contact, whether or not the seller is present in the State at the time of the contact or the time of sale, and who does not have, for the purposes of carrying on such business, any permanent place of business within this State. "Transient seller of consumer merchandise" does not include a person who sells at public fairs, expositions or bazaars or a member selling on behalf of public service organizations. "Transient seller of consumer merchandise" does not include a person who sells exclusively by mail contact, except for a person who offers merchandise or money prizes as free of charge, such as contest prizes or gifts for answering a survey, but who requires the recipient to pay something of value in order to participate in this offer, including, but not limited to, entrance fees, processing fees or handling charges. A "transient seller of consumer merchandise" does not include a supervised lender as defined in Title 9-A, section 1-301, subsection 39. [2001, c. 324, §12 (new).]

#### **§14702. Registration**

Every person that engages in the business of transient sellers of consumer merchandise, including the self-employed or those who employ one or more transient sellers of consumer merchandise, shall apply to the department and acquire a registration in the manner set forth in section 14706 before engaging in sales of consumer merchandise in this State. [2001, c. 324, §12 (new).]

#### **§14703. Registrations**

- 1. Issuance.** The department shall issue to each transient seller of consumer merchandise and employee of that transient seller a registration that, among other things, must indicate that the person whose name appears on the registration is a registered seller or employee of a registered seller under this subchapter. [2001, c. 324, §12 (new).]
- 2. Possession and presentation.** Every transient seller of consumer merchandise and each of the seller's employees must have a valid registration, as required by this subchapter, in the seller's or employee's immediate possession at all times when engaging in sales of consumer merchandise in this State and shall present the registration for inspection upon request of any person. [2001, c. 324, §12 (new).]

#### **§14704. Disclosure of registration number and permanent place of business**

**1. Registration number and permanent place of business disclosed in advertisements.** Every time a transient seller of consumer merchandise advertises in this State for the sale of merchandise, whether in print or electronic media, the advertisement must disclose the transient seller's registration number in the following manner: "State Department of Professional and Financial Regulation Transient Seller's Registration Number: (Fill in number)" and must disclose the address of the seller's permanent place of business. [2001, c. 324, §12 (new).]

**2. Registration number and place of business disclosed in written receipt.** Every time a transient seller of consumer merchandise sells merchandise to a consumer in this State, the transient seller shall provide the purchaser with a written receipt, at the time of sale, disclosing the transient seller's registration number in the following manner: "State Department of Professional and Financial Regulation Transient Seller's Registration Number: (Fill in number)" and disclosing the transient seller's name and permanent place of business. [2001, c. 324, §12 (new).]

### **§14705. Local registration**

Nothing in this subchapter affects the right of any town or municipality to make such regulations relative to transient sellers of consumer merchandise as may be permissible under the general law or under any municipal charter. [2001, c. 324, §12 (new).]

### **§14706. Application**

Each application for a transient seller of consumer merchandise registration required by section 14702 must be made upon a form prescribed by the department, must be sworn to and must include: [2001, c. 324, §12 (new).]

- 1. Name and address.** The name and local and permanent business address of the applicant; [2001, c. 324, §12 (new).]
- 2. Employees of applicant.** Names of all employees of the applicant employed in this State; [2001, c. 324, §12 (new).]
- 3. Statement.** A statement of all judgments secured or outstanding against the applicant arising out of sales to consumers during the 2 years immediately prior to making the application and of all suits of either a criminal or civil nature pending against the applicant that arise out of sales to consumers, at the time of making the application; [2001, c. 324, §12 (new).]
- 4. Statement of yearly gross revenues.** A statement of anticipated yearly gross revenues from sales of consumer merchandise in this State; [2001, c. 324, §12 (new).]
- 5. Security deposits.** The name and address of the person to whom security deposits made with the department pursuant to this subchapter are returned; and [2001, c. 324, §12 (new).]
- 6. Seller's certificate.** The number of a valid transient seller of consumer merchandise's registration certificate issued to the applicant by the State Tax Assessor pursuant to Title 36, chapter 211 or satisfactory evidence that the applicant is not required to be registered under that Title. [2001, c. 324, §12 (new).]

The applicant shall promptly notify the department of all changes or additions in the information required in this section upon a form prescribed by the department. [2001, c. 324, §12 (new).]

Any false statement in an application, either original or supplementary, for a registration subjects the applicant to the same penalty as if the applicant had no registration. [2001, c. 324, §12 (new).]

### **§14707. Renewal application**

A renewal application made under this subchapter and made upon a form prescribed by the department must be filed by the applicant on October 31st annually or at such other times as the Commissioner of Professional and Financial Regulation may designate. The renewal application must include all changes or additions in the information required by section 14706. Notice must be mailed to each applicant's last known address 30 days in advance of the expiration date of the applicant's current registration. The renewal application must be accompanied by a renewal fee, as provided in section 14708. [2001, c. 324, §12 (new).]

### **§14708. Registration fee and security deposit**

**1. Fees.** The department shall establish fees by rule for applications, registrations and renewals under this subchapter in an amount not to exceed \$300 annually for any one purpose. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A. [2001, c. 324, §12 (new).]

**2. Dedicated revenues.** All fees received under this subchapter must be paid to the Treasurer of State to be used for carrying out this subchapter. Any balance of these fees may not lapse, but must be carried forward as a continuing account to be expended for the same purpose in the following fiscal year. [2001, c. 324, §12 (new).]

**3. Security deposit.** Every person that engages in the business of transient sellers of consumer merchandise, including the self-employed or those who employ one or more transient sellers of consumer merchandise, shall also make a security deposit of \$10,000 or of a sum equal to the anticipated yearly gross revenues in this State, whichever is less, with the department for the protection of consumers as described in section 14712. The security deposit may be made by a bond as drawn by the department and as secured by a surety approved by the department. Only one security deposit is required of each person engaged in transient sales of consumer merchandise. [2001, c. 324, §12 (new).]

**4. Registration issued.** The department shall issue to a transient seller of consumer merchandise and to employees of that transient seller a registration upon receipt of a completed application in proper form with required fees and a security deposit. [2001, c. 324, §12 (new).]

### **§14709. Waiver of security deposit**

Transient sellers of consumer merchandise may apply to the department for waiver of the security deposit required by section 14708 by presenting to the authorized person within the department the following information in addition to the information required under section 14706: [2001, c. 324, §12 (new).]

**1. Consumer sales.** A sworn statement by the applicant that the applicant has continuously engaged in consumer sales in this State for a period not less than 3 years; [2001, c. 324, §12 (new).]

**2. Theft offenses; fraudulent or deceptive business practice.** A sworn statement by the applicant that neither the applicant nor any employee of the applicant operating in this State has been convicted of any theft offense or fraudulent or deceptive business practice in any United States' jurisdiction; [2001, c. 324, §12 (new).]

**3. Complaints on file against applicant.** A letter from the Attorney General's office in the state where the applicant has its principal place of business stating the nature or absence thereof of complaints on file against the applicant; and [2001, c. 324, §12 (new).]

**4. Letter of recommendation.** A letter of recommendation from an appropriate trade association that promotes sound and ethical trade practices and the processing of consumer complaints that states the applicant is a member in good standing of that association. [2001, c. 324, §12 (new).]

The authorized person within the department shall forward the completed application for waiver of the security deposit to the Office of the Attorney General for review and shall within 15 days of receipt of the completed application and with the advice of the Attorney General grant or deny the application for waiver. [2001, c. 324, §12 (new).]

#### **§14710. Revocation of right to waive security deposit**

The authorized person within the department shall rescind the right of a transient seller of consumer merchandise to waive a security deposit upon occurrence of any of the following: [2001, c. 324, §12 (new).]

- 1. Conviction for theft or fraudulent business practices.** The transient seller of consumer merchandise or any employee is convicted of a theft offense or fraudulent or deceptive business practice; [2001, c. 324, §12 (new).]
- 2. Failure to defend action under Title 5, chapter 10.** The transient seller of consumer merchandise or any employee fails to successfully defend any action brought against it under Title 5, chapter 10; or [2001, c. 324, §12 (new).]
- 3. Failure to negotiate consumer complaints.** The transient seller of consumer merchandise or any employee fails to negotiate consumer complaints filed against it with the Attorney General. [2001, c. 324, §12 (new).]

## **§14711. Expiration**

### **1. Registrations.** Registrations issued under section 14703 expire:

- A. On the date that the registrant establishes a permanent place of business and surrenders the registrant's registration to the department; [2001, c. 324, §12 (new).]
- B. When the registrant fails to file a renewal application as required by section 14707; or [2001, c. 324, §12 (new).]
- C. Upon the surrender of the registration for cancellation. [2001, c. 324, §12 (new).]  
[2001, c. 324, §12 (new).]

## **§14712. Security deposit subject to claims; order of preference; return of security deposit**

Each security deposit made under section 14708 is subject, so long as it remains in the hands of the department, to the attachment and execution in behalf of consumers whose claims arise in connection with the transient sale of consumer merchandise in this State. The department may be impleaded as a trustee in any civil action brought against any registrant and shall pay over, under order of court, such sum of money as the department may be found chargeable. The security deposit is subject to the payment of any fines and penalties incurred by the registrant through any of the provisions of this subchapter, and the clerk of the court in which that fine or penalty is imposed shall notify the department of the name of the registrant against whom that fine or penalty is adjudged and of the amount of that fine or penalty. The department, if it has in its possession a sufficient sum deposited by that registrant, shall pay the sum so specified to the clerk. If the department does not have a sufficient sum so deposited, it shall make payment of so much as it has in its possession. All claims upon the deposit must be satisfied after judgment, fine and penalty, in the order in which the order of court is entered in the respective suits, until all claims are satisfied or the security deposit is exhausted. A security deposit may not be paid over by the department to a registrant so long as there are any outstanding claims or notices of claims that are subject of suit against the registrant, in which case the department shall retain only such sum of the security deposit as is subject of claim. [2001, c. 324, §12 (new).]

The security deposit required under section 14708 must be returned to the person so designated pursuant to section 14706, subsection 5 in the registrant's application for registration made under section 14702 12 months following the expiration of the registration. [2001, c. 324, §12 (new).]

## **§14713. Violations and penalties**

- 1. Criminal penalty.** Violation of section 14702, section 14703, subsection 2 or section 14704 is a Class E crime for which the State need not plead or prove a culpable state of mind, except that a violation of section 14702, section 14703, subsection 2 or section 14704 is a Class D crime if the State pleads and proves that the act or omission was intentional. [2001, c. 324, §12 (new).]

2. **Unfair trade practice.** A person who fails to comply with this subchapter commits a violation of Title 5, chapter 10. [2001, c. 324, §12 (new).]

#### §14714. Service of process

The department is an agent of each person, including the self-employed, who employs one or more transient sellers of consumer merchandise for service of any process, notice or demand required or permitted by law to be served, and this service is binding upon the person. Service of any such process, notice or demand must be made as provided by Rule 4(d)(b) of the Maine Rules of Civil Procedure, as amended. [2001, c. 324, §12 (new).]

#### §14715. Prohibited practices

A transient seller of consumer merchandise may not: [2001, c. 324, §12 (new).]

1. **Misrepresentations.** Misrepresent any material fact relating to the terms or conditions of sale; [2001, c. 324, §12 (new).]
2. **False impressions.** Create an impression that is false or the transient seller of consumer merchandise does not believe to be true; and [2001, c. 324, §12 (new).]
3. **False promises.** Promise performance that the transient seller of consumer merchandise does not intend to perform or knows will not be performed. [2001, c. 324, §12 (new).]

#### §14716. Telemarketers

1. **Incorporation of federal standards.** Violation of any provision of the Federal Trade Commission's Telemarketing Sales Rule, 16 Code of Federal Regulations, Part 310, as in effect on January 1, 2000, by a transient seller of consumer merchandise is a violation of this subchapter. [2001, c. 324, §12 (new).]
2. **Additional prohibitions.** A transient seller of consumer merchandise who is a telemarketer, as defined in the Federal Trade Commission's Telemarketing Sales Rule, 16 Code of Federal Regulations, Section 310.2, as in effect on January 1, 2000, and who initiates telephone contact with a consumer may not procure the services of any professional delivery courier or other pick-up service to obtain immediate receipt or possession of a consumer's payment, unless the goods are delivered with the opportunity to inspect before any payment is collected. [2001, c. 324, §12 (new).]
3. **Do-not-call list.** A transient seller of consumer merchandise who is a telemarketer, as defined in the Federal Trade Commission's Telemarketing Sales Rule, 16 Code of Federal Regulations, Section 310.2, as in effect on January 1, 2000:

A. Shall semiannually obtain subscription listings of consumers in this State who have arranged to be included on the national do-not-call list maintained by the Telephone Preference Service of the Direct Marketing Association, Inc., Farmingdale, New York or its successor organization; and [2001, c. 324, §12 (new).]

B. May not call any consumer in this State whose name is on the national do-not-call list unless the seller has an established business relationship with the consumer at the time the call is made. [2001, c. 324, §12 (new).]

**4. Other applicable law.** A transient seller of consumer merchandise who is a telemarketer, as defined in the Federal Trade Commission's Telemarketing Sales Rule, 16 Code of Federal Regulations, Section 310.2, as in effect on January 1, 2000, is subject to and shall comply with the provisions of chapter 69, subchapter V. [2001, c. 324, §12 (new).]

**CHAPTER 128**  
**DOOR-TO-DOOR HOME REPAIR TRANSIENT SELLERS**  
**(HEADING: PL 1993, c. 444, §1 (new))**

**32 § 14501. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1993, c. 444, §1 (new).]

**1. Consumer.** "Consumer" means any person who purchases or contracts for the purchase of home repair services.

[1993, c. 444, §1 (new).]

**2. Department.** "Department" means the Department of Professional and Financial Regulation, Office of Licensing and Registration.

[1993, c. 444, §1 (new); 1995, c. 502, Pt. H, §48 (amd).]

**3. Door-to-door sales.** "Door-to-door sales" means the solicitation or sale of home repair services by a home repair seller or the seller's employees to a consumer as a result of or in connection with the seller's or the employee's direct contact accomplished by means of a personal visit to the consumer, other than at the seller's place of business, without the consumer soliciting the initial contact.

[1993, c. 444, §1 (new).]

**4. Employee.** "Employee" means any independent contractor, agent or person working for a salary or a commission who is affiliated with a home repair seller.

[1993, c. 444, §1 (new).]

**5. Home repair seller.** "Home repair seller" means any person, partnership, corporation, business, trust or other legal entity that sells or provides home repair services.

[1993, c. 444, §1 (new).]

**6. Home repair services.** "Home repair services" means to fix, replace, alter, convert, modernize, improve or make an addition to real property primarily designed or used as a residence. "Home repair services" includes, but is not limited to, the construction, installation, replacement, improvement or cleaning of driveways, swimming pools, porches, kitchens, chimneys, chimney liners, garages, fences, fall-out shelters, central air conditioning, central heating, boilers, furnaces, hot water heaters, electric wiring, sewers, plumbing fixtures, storm doors, storm windows, siding or awnings or other improvements to structures within the residence or upon the land adjacent to the residence, including tree trimming.

[1993, c. 444, §1 (new).]

**7. Permanent place of business.** "Permanent place of business" means a building or other permanent structure, including a home residence, that is owned or held under a 12-

month lease or rental agreement, from which business is commenced and that is used in whole or in part for the purpose of engaging in sales of home repair services.

[1993, c. 444, §1 (new).]

**8. Residence.** "Residence" means a single-family or multifamily dwelling, including but not limited to a single-family home, apartment building, condominium, duplex or town house that is used or intended to be used by its occupants as a dwelling place.

[1993, c. 444, §1 (new).]

**9. Transient seller of home repair services.** "Transient seller of home repair services," "transient seller" or "seller" means a home repair seller who engages in the business of door-to-door solicitations or sales of home repair services who does not have, at the time of the solicitation or contract, a permanent place of business in the municipality in which the door-to-door solicitation or sale occurs.

[1993, c. 444, §1 (new).]

Section History:

1993, c. 444, § 1 (NEW).

1995, c. 502, § H48 (AMD).

### **32 § 14502. Exemptions**

**1. New homes.** This chapter does not apply to the original construction of a single-family or multifamily residence.

[1993, c. 444, §1 (new).]

**2. Sales amount.** This chapter does not apply to home repair services for which the gross sales price, including any interest or carrying charges, is less than \$25.

[1993, c. 444, §1 (new).]

Section History:

1993, c. 444, § 1 (NEW).

### **32 § 14503. Home repair services contract**

It is a violation of this chapter if a contract for home repair services to be provided by a transient seller of home repair services fails to meet the written contract requirements, if applicable, of: [1993, c. 444, §1 (new).]

**1. Consumer solicitations or sales.** The laws governing consumer solicitations or sales, sections 4661 to 4670;

[1993, c. 444, §1 (new).]

**2. Transient sales.** The laws governing transient sales, sections 4681 to 4689;

[1993, c. 444, §1 (new).]

**3. Home solicitation sales.** The laws governing home solicitation sales, Title 9-A, sections 3-501 to 3-507; and [1993, c. 444, §1 (new).]

**4. Home construction contracts.** The laws governing home construction contracts, Title 10, sections 1486 to 1490.

[1993, c. 444, §1 (new).]

Section History:

1993, c. 444, § 1 (NEW).

### **32 § 14504. Registration required**

A transient seller of home repair services must register with the department and acquire a door-to-door sales registration in the manner set forth in section 14505 before engaging in the door-to-door sales of home repair services. A transient seller who solicits sales during the course of a municipal or state repair contract is exempt from this requirement. [1993, c. 444, §1 (new).]

Section History:

1993, c. 444, § 1 (NEW).

### **32 § 14505. Evidence of registration**

Upon registration, the department shall issue to a transient seller of home repair services a door-to-door sales registration that indicates that the person whose name appears on the registration is a registered transient seller of home repair services under this chapter. The registration must also include the name of the seller's company. [1993, c. 444, §1 (new).]

Section History:

1993, c. 444, § 1 (NEW).

### **32 § 14506. Disclosure of registration number**

A contract for door-to-door sales of home repair services by a transient seller of home repair services must include the seller's door-to-door sales registration number in the following manner: State door-to-door sales registration #: (fill in number). [1993, c. 444, §1 (new).]

Section History:

1993, c. 444, § 1 (NEW).

### **32 § 14507. Application**

An application for registration under this chapter must be sworn to and must include: [1993, c. 444, §1 (new).]

**1. Application information.** The name, local and permanent business and residential address or addresses, date of birth and social security number of the home repair seller;

[1993, c. 444, §1 (new).]

**2. Employees of the seller.** The names and addresses of employees of the seller, their dates of birth and social security numbers;

[1993, c. 444, §1 (new).]

**3. Statement.** At the time of making the application, a statement of all civil judgments or criminal convictions secured or outstanding against the seller that arises out of home repair services during the 4 years prior to making the application, all criminal and civil suits pending against the seller that arise out of home repair services and all criminal convictions and criminal suits pending for theft against the seller.

The seller shall promptly notify the department of all changes or additions in the information required by this section.

Knowingly, intentionally or recklessly making a false statement in an application is grounds for denial of the application or revocation of the registration; and

[1993, c. 444, §1 (new).]

**4. Photograph.** A recent photograph of the home repair seller.

[1993, c. 444, §1 (new).]

Section History:

1993, c. 444, § 1 (NEW).

### **32 § 14508. Renewal application**

An annual renewal application must be filed by the seller on October 31st or at such other times as the department designates. The renewal application must include changes or additions to the information required by section 14507. The department shall mail notice to the transient seller's last known address 30 days in advance of the expiration date. The renewal application must be accompanied by a renewal fee, as provided in section 14509.

[1993, c. 444, §1 (new).]

Section History:

1993, c. 444, § 1 (NEW).

### **32 § 14509. Registration fee**

A transient seller must pay to the department the following fees at the time an application is made for registration or renewal: [1993, c. 444, §1 (new).]

**1. Transient seller registration.** For an original transient seller of home repair services registration, \$100; and

[1993, c. 444, §1 (new).]

**2. Renewal.** For a renewal application, \$75.

[1993, c. 444, §1 (new).]

The aggregate of fees provided for by this section is appropriated for the use of the department. Any balance of funds may not lapse but must be carried forward to be expended for the same purposes in the following fiscal year. [1993, c. 444, §1 (new).]

Section History:

1993, c. 444, § 1 (NEW).

### **32 § 14510. Service of process**

The department is an agent of a transient seller of home repair services engaging in those services for service of any process, notice or demand required or permitted by law. This service is binding upon the seller. Service of any such process, notice or demand must be made as provided by the Maine Rules of Civil Procedure. [1993, c. 444, §1 (new).]

Section History:

1993, c. 444, § 1 (NEW).

### **32 § 14511. Forms and model contract**

The Department of the Attorney General has rule-making authority to adopt all forms necessary to fully implement this chapter. The Department of the Attorney General shall prepare a form contract for door-to-door sales, that fully meets the obligations of a transient seller of home repair services under this chapter. The Department of the Attorney General shall provide these forms at no cost to the department. [1993, c. 444, §1 (new).]

Section History:

1993, c. 444, § 1 (NEW).

### **32 § 14512. Penalties**

**1. Criminal penalty.** Violation of section 14504 or section 14506 is a Class E crime for which the State need not plead or prove a culpable state of mind, except that a violation of section 14504 or 14506 is a Class D crime if the State pleads and proves that the act or omission was intentional.

[1995, c. 681, §5 (amd).]

**2. Civil penalty.** A transient seller of home repair services or the seller's employee failing to register in violation of this chapter commits a civil violation for which a civil penalty of up to \$2,000 may be adjudged against the seller and each employee. If the person violates this chapter 2 or more times, or if the injured consumer is more than 60 years of age, the civil violation penalty may be up to \$5,000. Subsection 1 and this subsection are enforceable by either the Department of the Attorney General or the District Attorney.

[1993, c. 444, §1 (new).]

**3. Unfair trade practice.** A transient seller of home repair services who fails to register in violation of this chapter commits an unfair trade practice in violation of Title 5, section 207.

[1993, c. 444, §1 (new).]

**4. Revocation.** In any action under this section the court may also revoke the seller's registration to engage in the door-to-door sale of home repair services.

[1993, c. 444, §1 (new).]

Section History:

1993, c. 444, § 1 (NEW).      1995, c. 681, § 5 (AMD).

**THE ATTORNEY GENERAL'S  
MODEL HOME CONSTRUCTION CONTRACT**

This model contract is for home construction, repair, or remodeling. It was drafted by the Public Protection Division of the Maine Attorney General in an attempt to meet the requirements of 10 M.R.S.A. §§ 1486-90, Home Construction Contracts. You are free to copy this contract and use it for your home construction project. *The Maine Attorney General does not guarantee that this model contract satisfies all legal requirements.*

Contract No. \_\_\_\_\_

**1. Parties To This Contract:**

A. Contractor \_\_\_\_\_  
Name \_\_\_\_\_ Phone \_\_\_\_\_  
Address \_\_\_\_\_

B. Homeowner or Lessee \_\_\_\_\_  
Name \_\_\_\_\_ Phone \_\_\_\_\_  
Address \_\_\_\_\_

**2. Location Of Work:** \_\_\_\_\_

**3. Completion Dates:**

A. Estimated date of commencement \_\_\_\_\_

B. Estimated date of completion \_\_\_\_\_

**4. Contract Price** (if a "cost-plus" formula the cost of labor and materials must be estimated): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**5. Method of Payment** (initial down payment is limited to no more than 1/3 of the total contract price):

\_\_\_\_\_  
\_\_\_\_\_

**6. Description of the Work:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**7. Warranties:** The contractor provides the following express warranty: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In addition to any additional express warranties agreed to by the parties, the contractor warrants that the work will be free from faulty materials; constructed according to the standards of the building code applicable for this location; constructed in a skillful manner and fit for habitation. The warranty rights and remedies set forth in the Maine Uniform Commercial Code apply to this contract.

8. **Resolution of Disputes.** If a dispute arises concerning the provisions of this contract or the performance by the parties, then the parties agree to settle this dispute by jointly paying for one of the following (check only one):

(1) Binding arbitration as regulated by the Maine Uniform Arbitration Act, with the parties agreeing to accept as final the arbitrator's decision (\_\_\_\_);

(2) Non-binding arbitration, with the parties free to not accept the arbitrator's decision and to seek satisfaction through other means, including a lawsuit (\_\_\_\_);

(3) Mediation, with the parties agreeing to enter into good faith negotiations through a neutral mediator in order to attempt to resolve their differences (\_\_\_\_);

The parties are *not* required to select one of these dispute resolution methods. They are optional. If the parties do *not* select one of these dispute resolution options, check here: \_\_\_\_\_.

9. **Change Orders.** Any alteration or deviation from the above contractual specifications that involve extra cost will be executed *only upon the parties entering into a written change order*.

10. **Additional Provisions:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PLEASE NOTE: if this contract is being used by contractors who sell door-to-door it must meet any applicable requirements of 32 M.R.S.A. §§ 4661-4671, Consumer Solicitation Sales Act, 32 M.R.S.A. §§ 14501-14512, Door-to-Door Home Repair Transient Sellers, and 9-A M.R.S.A. §§ 3-501-3-507, including a description of the consumer's 3 day right to cancel the contract. If this contract includes installation of insulation in an existing residence it must contain a detailed description of the insulation as required by 10 M.R.S.A. § 1482. If this contract includes construction of a new residential building or a new addition to an existing residence, it must contain a statement that 10 M.R.S.A. §§ 1411 - 1420 establishes minimum energy efficient building standards for new residential construction, and whether this building or addition will meet or exceed those standards.

11. **Contract Acceptance:**

\_\_\_\_\_  
(Homeowner or Lessee) Signature: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_  
(Contractor) Signature: \_\_\_\_\_ Date: \_\_\_\_\_

EACH PARTY MUST RECEIVE A COPY OF THIS SIGNED CONTRACT BEFORE WORK CAN BE STARTED.

**THE ATTORNEY GENERAL'S  
MODEL HOME CONSTRUCTION CONTRACT  
CHANGE ORDER**

Pursuant to 10 M.R.S.A. § 1488, each *change order* to an existing home construction contract must be in writing and becomes a part of and is in conformance with the original contract. All work shall be performed under the same terms and conditions as specified in the original contract unless otherwise stipulated. The change order must detail all changes to the original contract that result in a revision of the contract price. The previous contract price must be stated and the revised price shall also be stated. Both parties must sign the change order.

Contract No. \_\_\_\_\_

**1. Parties To This Change Order:**

A. Contractor \_\_\_\_\_  
Name \_\_\_\_\_ Phone \_\_\_\_\_

Address \_\_\_\_\_

B. Homeowner or Lessee \_\_\_\_\_  
Name \_\_\_\_\_ Phone \_\_\_\_\_

Address \_\_\_\_\_

2. Date Original Contract Signed: \_\_\_\_\_

3. Changes in the Work Originally Contracted For: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**4. Price Change:**

A. Original Contract Price \$ \_\_\_\_\_

B. Revised Contract Price \$ \_\_\_\_\_

**5. Acceptance of Change Order:**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
(Homeowner or Lessee)

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
(Contractor)

**EACH PARTY MUST RECEIVE A COPY OF THIS SIGNED CONTRACT BEFORE WORK CAN BE STARTED.**

## APPENDIX B

1. Hypothetical Fact Pattern of a Door-to-Door Driveway Paver and Sample Criminal Complaints (pp. B-1 to B-2)
2. Sample Criminal Complaints (pp. B-3 to B-6)

## **APPENDIX B**

### **HYPOTHETICAL FACT PATTERN OF A DOOR-TO-DOOR DRIVEWAY PAVER AND SAMPLE CRIMINAL COMPLAINTS**

On April 15, 1997 **John Seller** and his crew of driveway pavers drove into South Portland. Mr. Seller resides in Biddeford but moves around the State selling his home repair services. Mr. Seller often sends an employee to the doors to do the initial solicitation.<sup>4</sup>

The crew arrives at consumer **Jane Doe's** house at approximately 4:30 p.m. One of Mr. Seller's employees goes to the front door and tells Ms. Doe that they just finished a job in the neighborhood and that they had a little bit of blacktop left over and could give her a real good deal.

Ms. Doe agrees to pay \$600.00 for the crew to blacktop her entire driveway. She also agrees that he should not wait 3 days and instead should start to work immediately.<sup>5</sup> She signs a simple form contract, which has the heading:

**John Seller's Paving Company**  
Biddeford, Maine

The contract does not have a permanent business address<sup>6</sup> and there is no provision that reads the consumer has three (3) days in which to cancel this contract and that the work will not be started until this three (3) day period has passed.<sup>7</sup>

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4/ If his crew are acting as his agents, Mr. Seller is responsible for his crew's actions

5/ A consumer cannot waive her rights to the three day "cooling-off" period provided by the Consumer Solicitation Sales Act.

6/A door-to-door seller's contract must have the name and mailing address of the seller's permanent place of business (32 M.R.S.A. §4662). If the seller does not have a permanent place of business then he must be registered with the State as a "transient seller" (32 M.R.S.A. §14703) (call State Licensing Division at 624-8603 to confirm that the paver is registered).

7/ This contract clearly violates the Consumer Solicitation Sales Act. See 32 M.R.S.A. §4662.

Once Ms. Doe agreed to the job, Seller's crew immediately began work.<sup>8</sup> They quickly laid on the blacktop, rolled it smooth, and cleaned up after themselves. It appeared to be a reasonably good job. Seller then approached Ms. Doe for his money. He stated to her: "I'm afraid the driveway was longer than we estimated. Therefore, I'm going to have to charge you \$900.00." Ms. Doe protested but she finally agreed and paid him by check.<sup>9</sup>

While the job was being completed,<sup>10</sup> South Portland Police had been alerted by a neighbor. They drove up to inspect the job and were told by John Seller that he had a contract with Ms. Doe, and that she had authorized him to do the work immediately and not wait three (3) days.<sup>11</sup>

This fact pattern could result in the following four criminal complaints.

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8/Seller must wait 3 days before beginning a permanent addition to the homestead (e.g., driveway repair, new siding, chimney repair, etc.). (32 M.R.S.A. §4664-A).

9/ Seller cannot change the terms of the contract. If his inflated charge was intentional fraud, then this could be Theft by Deception (17-A M.R.S.A. § 354).

10/ If the police arrived while the job is being completed, then Seller has been caught in the midst of a three count Class D crime (Seller's contract was illegal and he did not wait three days (**Consumer Solicitation Sales Act**); he was not registered with the State as a Transient Seller (**Transient Sellers Act**) and he is not registered with the State as a door-to-door seller of home repairs (**Door-to-Door Sellers of Home Repairs Contracts Act**) (all State Licensing Division at 624-8603 to confirm that the paver is registered).

11/ The contract is illegal. Seller cannot persuade Ms. Doe to waive her right to revoke after a three day waiting period (32 M.R.S.A. §4667).

COMPLAINT #1

STATE OF MAINE  
CUMBERLAND, ss.

DISTRICT COURT  
LOCATED AT PORTLAND  
CRIMINAL ACTION  
DOCKET NO. CR-99-

STATE OF MAINE,	)	
	)	
Plaintiff	)	CRIMINAL COMPLAINT
v.	)	FOR VIOLATION OF
	)	CONSUMER SOLICITATION SALES ACT,
JOHN SELLER,	)	32 M.R.S.A. § 4667
	)	(CLASS E) <sup>12</sup>
Defendant	)	
	)	

\_\_\_\_\_, being duly sworn, deposes and says upon information and belief that:

On or about April 15, 2002, in the City of Portland, County of Cumberland, State of Maine, the above named defendant did engage in the business of Consumer Solicitation of Sales in that (1) he entered into a contract with the consumer Jane Doe for \$600.00 for the purpose of repairing her driveway paving and (2) the initial contact with the consumer was made by the defendant by contacting her at her home and (3) he failed to provide the consumer with a written contract which met the requirements of the Consumer Solicitation Sales Act, in violation of the Consumer Solicitation Sales Act, 32 M.R.S.A. §§4661 - 4671.

COMPLAINANT

Sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2002.

CLERK/COMPLAINT JUSTICE/JUDGE

<sup>12</sup> If the State pleads and proves that the Defendant's violation was intentional, it is a Class D crime.

COMPLAINT #2

STATE OF MAINE  
CUMBERLAND, ss.

DISTRICT COURT  
LOCATED AT PORTLAND  
CRIMINAL ACTION  
DOCKET NO. CR-99-

STATE OF MAINE,

Plaintiff

v.

JOHN SELLER,

Defendant

CRIMINAL COMPLAINT  
FOR VIOLATION OF  
CONSUMER SOLICITATION

SALES ACT,  
32 M.R.S.A. § 4667  
(CLASS E)<sup>13</sup>

\_\_\_\_\_, being duly sworn, deposes and says upon information and belief that:

On or about April 15, 2002, in the City of Portland, County of Cumberland, State of Maine, the above named defendant did engage in the business of Consumer Solicitation of Sales in that (1) he entered into a contract with the consumer Jane Doe for \$600.00 for the purpose of repairing her driveway paving and (2) the initial contact with the consumer was made by the defendant by contacting her at her home and (3) he commenced work without waiting three (3) days from the date the contract was entered into, all in violation of the Consumer Solicitation Sales Act, in violation of the Consumer Solicitation Sales Act, 32 M.R.S.A. §§4661 4671.

COMPLAINANT

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

CLERK/COMPLAINT JUSTICE/JUDGE

<sup>13</sup> If the State pleads and proves that the Defendant's violation was intentional, it is a Class D crime.

COMPLAINT #3

STATE OF MAINE  
CUMBERLAND, ss.

DISTRICT COURT  
LOCATED AT PORTLAND  
CRIMINAL ACTION  
DOCKET NO. CR-99-

STATE OF MAINE,

Plaintiff

v.

JOHN SELLER,

Defendant

CRIMINAL COMPLAINT  
FOR VIOLATION OF  
TRANSIENT SALES ACT

32 M.R.S.A. § 14713  
(CLASS E)<sup>14</sup>

\_\_\_\_\_, being duly sworn, deposes and says upon information and belief that:

On or about April 15, 2002, in the City of Portland, County of Cumberland, State of Maine, the above named defendant did engage in the business of selling driveway repiar services to consumer Jane Doe by (1) personally contacting her at her home for the purpose of carrying on such business and (2) not having any permanent place of business within this State and (3) not being registered with the Department of Professional and Financial Regulations as a Transient Seller, all in violation of the Transient Sales Act (32 M.R.S.A. §§14701-14716).

COMPLAINANT

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

CLERK/COMPLAINT JUSTICE/JUDGE

<sup>14</sup> If the State pleads and proves that the Defendant's violation was intentional, it is a Class D crime.

COMPLAINT #4

STATE OF MAINE  
CUMBERLAND, ss.

DISTRICT COURT  
LOCATED AT PORTLAND  
CRIMINAL ACTION  
DOCKET NO. CR-99-

STATE OF MAINE,

Plaintiff

v.

JOHN SELLER,

Defendant

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

CRIMINAL COMPLAINT  
FOR VIOLATION OF  
DOOR-TO-DOOR TRANSIENT  
SELLERS OF HOME REPAIRS ACT  
32 M.R.S.A. § 14512  
(CLASS E)<sup>15</sup>

\_\_\_\_\_, being duly sworn, deposes and says upon information and belief that:

On or about April 15, 2002, in the City of Portland, County of Cumberland, State of Maine, the above named defendant did engage in the door-to-door sale of home repair services with the consumer Jane Doe to repair for \$600 her driveway paving and (1) at the time of sale did not have a permanent place of business in the municipality in which the sale occurred, namely, South Portland, and (2) failed to provide the consumer with a written contract which met the requirements of the Door-to-Door Transient Sellers of Home Repairs Act and (3) was not registered with the Department of Professional and Financial Regulations as a Transient Seller of Home Repair Services, all in violation of the Door-to-Door Home Repair Transient Sellers Act, 32 M.R.S.A. §§ 14501 - 14512.

COMPLAINANT

Sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2002.

CLERK/COMPLAINT JUSTICE/JUDGE

<sup>15</sup> If the State pleads and proves that the Defendant's violation was intentional, it is a Class D crime.